

U.S. Application Serial No. 09/558,121

REMARKS

The present amendment is in response to the Official Action dated July 1, 2004, made final, wherein the Examiner rejected pending claims 13, 14, 18-20, 23, 25-27 and 30; and objected to pending claims 16, 17, 21, 22, 24, 28, 29 and 31. More specifically, the Examiner has rejected claims 13, 14 under 35 U.S.C. 103(a) as being unpatentable over Hutchison, IV et al., US Patent No. 5,790,589 in view of Storm et al., US Patent No. 6,144,649. The Examiner has further rejected claims 18, 19, 23, 25, 26 and 30 under 35 U.S.C. 103(a) as being unpatentable over Storm et al., '649, in view of Hulbert, US Patent No. 6,069,915; and still further rejected claims 20 and 27 under 35 U.S.C. 103(a) as being unpatentable over Storm et al., '649, and Hulbert, '915, in further view of Chen, US Patent No. 5,881,058. Claims 16, 17, 21, 22, 24, 28, 29 and 31 have been rejected only to the extent that they are dependent upon a rejected base claim. The applicants note with appreciation the allowance of claims 1, 2, 5-12, 15 and 32-34, and the indication of allowability relative to claims 16, 17, 21, 22, 24, 28, 29 and 31.

However, the rejections have been inappropriately applied to the present application, in so far as at least Storm et al., US Patent No. 6,144,649, the reference relied upon by the Examiner in connection with each of the rejected claim, does not constitute an appropriate reference upon which to base an obviousness type rejection under 35 U.S.C. §103(a), in view of the common ownership of the reference and the present application, as evidenced by the common assignment to Motorola, Inc.

More specifically, Storm et al., US Patent No. 6,144,649, as indicated on the front page of the published patent, is assigned to Motorola, Inc. According to the PTO records, which are available through the USPTO web site, the assignment for the published patent is recorded at REEL/FRAME 008516/0815. The present application is similarly assigned to Motorola, Inc. The assignment for the present application is recorded at REEL/FRAME 011033/0585. Furthermore, because the cited reference, Storm et al., '649, could only potentially qualify as prior art under one or more of subsections (e), (f), and (g) of section 102, 35 U.S.C. §103(c) precludes the reference from being used in support of a rejection under 35 U.S.C. §103(a), irrespective as to whether the reference does or does not otherwise support the position of the Examiner. As noted above, each of the rejections raised by the Examiner relative to the claims

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relies upon Storm et al., '649, as a basis for the rejection. Consequently, the Examiner has failed to allege a proper rejection.

In absence of a properly presented and/or supported rejection of the claims, a rejection of the present application (final or non-final) is inappropriate. In view of the above noted remarks, the applicants would respectfully request that the Examiner reconsider and reexamine the claims pending in the present application. Should any issues remain unresolved after the consideration of the present response, the Examiner is requested to contact the applicants' representative at the number listed below to discuss the same.

Respectfully submitted,

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